

AMENDED IN SENATE APRIL 17, 2006

SENATE BILL

No. 1636

Introduced by Senator Ackerman

February 24, 2006

An act to amend Sections 3426.4, 3426.5, and 3426.7 of the Civil Code, to amend Section 2019.210 of the Code of Civil Procedure, and to amend ~~Sections 6253 and~~ Section 6254 of, and to add Section 6256 to, the Government Code, relating to trade secrets.

LEGISLATIVE COUNSEL'S DIGEST

SB 1636, as amended, Ackerman. Trade secrets.

Existing law, the Uniform Trade Secrets Act, provides that actual or threatened acquisition of a trade secret, as defined, by a person who knows or has reason to know that the trade secret was acquired by improper means, or the disclosure or use of a trade secret without consent, may be enjoined.

Existing law, the Public Records Act, provides for the disclosure of public records, with specified exemptions.

Existing law requires a court to preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval. Existing law, also requires a party alleging misappropriation of a trade secret to identify the trade secret with reasonable particularity before commencing discovery related to the trade secret.

This bill would make clarifying and other changes to those provisions specifying the circumstances under which records containing trade secrets or confidential commercial or financial

information may be disclosed and the procedures for discovery and disclosure of that information.

The bill would provide, among other things, that subpoenas duces tecum for public records in judicial or administrative proceedings in which the public agency in possession of the records is not a party shall be deemed to be requests for records under the Public Records Act and shall be handled pursuant to the rules governing public disclosure under the act. ~~The bill also would require that whenever a subpoena duces tecum compelling production of records is served on a public agency employee in a judicial or administrative proceeding in which the agency is not a party, the employee, after consultation with counsel, must appear in response thereto, respectfully decline to produce the records and state that the production of the records involved will be handled in accordance with and treated as a Public Records Act request.~~

The bill would expand the provision requiring a court to preserve the secrecy of an alleged trade secret by reasonable means, by explicitly authorizing a court to order any person involved in the litigation not to use materials obtained for the first time in discovery in the litigation for purposes other than the prosecution or defense of the action. The bill would also require a party alleging misappropriation of a trade secret to identify that trade secret with reasonable specificity, rather than particularity, before commencing discovery related to the trade secret, and would set forth criteria for the court to consider in determining the appropriate level of specificity.

The bill would require state agencies to establish procedures to notify submitters of records containing trade secret or confidential commercial or financial information when those records are requested if the agency determines that it may be required to disclose the records. The procedures would be required to afford the submitter a reasonable period of time to object to the disclosure of the records, and the agency would be required to respond to the submitter's objections in a written statement. The agency also would be required to notify the requestor of the records that notice and an opportunity to comment are being provided to the submitter, to indicate any records withheld or information deleted on the released records, and to provide an index of deleted information and records withheld entirely.

The bill also would provide that *in* any suit brought by a person seeking to compel disclosure of records that have been withheld by an

agency for containing trade secret or confidential commercial or financial information ~~shall be brought only against the party bringing the suit shall join the submitter of the records and not against, to the extent that the submitter is not joined, the bill would require the agency responding to the request or subpoena to file a third party request to join the submitter, as specified.~~

The bill would also require an agency, to the extent that the agency receives a subpoena duces tecum requesting records that have been designated by a submitter as records containing a trade secret or confidential commercial or financial information, to provide notice and a copy of the subpoena to the submitter, to provide a reasonable opportunity to object to the request, to notify the party issuing the subpoena that the material has been so designated, and to object and withhold documents so designated until the submitter authorizes their release or a court orders enforcement of the subpoena.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3426.4 of the Civil Code is amended to
2 read:

3 3426.4. If a claim of misappropriation is made in bad faith, a
4 motion to terminate an injunction is made or resisted in bad faith,
5 or willful and malicious misappropriation exists, the court may
6 award reasonable attorney's fees and costs to the prevailing party.
7 Recoverable costs hereunder shall include a reasonable sum to
8 cover the services of expert witnesses, who are not regular
9 employees of any party, actually incurred and reasonably
10 necessary in either, or both, preparation for trial or arbitration, or
11 during trial or arbitration, of the case by the prevailing party.

12 SEC. 2. Section 3426.5 of the Civil Code is amended to read:

13 3426.5. In an action under this title, a court shall preserve the
14 secrecy of an alleged trade secret by reasonable means, which
15 may include granting protective orders in connection with
16 discovery proceedings, holding in-camera hearings, sealing the
17 records of the action, and ordering any person involved in the
18 litigation not to ~~use or~~ disclose an alleged trade secret *or use*
19 *materials obtained for the first time in discovery in the litigation*

1 *for purposes other than the prosecution or defense of the action*
2 *without prior court approval.*

3 SEC. 3. Section 3426.7 of the Civil Code is amended to read:

4 3426.7. (a) Except as otherwise expressly provided, this title
5 does not supersede any statute relating to misappropriation of a
6 trade secret, or any statute otherwise regulating trade secrets.

7 (b) This title does not affect any of the following:

8 (1) Contractual remedies, whether or not based upon
9 misappropriation of a trade secret.

10 (2) Other civil remedies that are not based upon
11 misappropriation of a trade secret.

12 (3) Criminal remedies, whether or not based upon
13 misappropriation of a trade secret.

14 SEC. 4. Section 2019.210 of the Code of Civil Procedure is
15 amended to read:

16 2019.210. (a) In any action alleging the misappropriation of
17 a trade secret, before commencing discovery relating to the trade
18 secret, the party alleging the misappropriation shall identify the
19 trade secret with reasonable—~~particularity~~ *specificity*. Any
20 document identifying a trade secret under this section need not be
21 filed with the court, but the party making the identification may
22 require that it be subject to any protective order that may be
23 appropriate under Section 3426.5 of the Civil Code prior to
24 serving it upon any party. If the document identifying a trade
25 secret under this section is filed with the court for any reason, it
26 shall be filed under seal unless good cause is shown. For
27 purposes of this section, “trade secret” has the meaning set forth
28 in subdivision (d) of Section 3426.1 of the Civil Code.

29 (b) In determining the appropriate level of specificity the court
30 shall consider, *among other relevant factors*, all of the following:

31 ~~(1) The purposes of this section to deter the filing of frivolous~~
32 ~~claims, encourage well-investigated claims, and to provide~~
33 ~~guidance in establishing the scope and limits of discovery related~~
34 ~~to the trade secret misappropriation claim.~~

35 (2)

36 (1) The extent to which the nature of the secret information
37 makes it amenable to precise description.

38 ~~(3) The extent to which the information is closely integrated~~
39 ~~with general skill and knowledge properly retained by former~~
40 ~~employees.~~

1 ~~(4) The extent to which the information is alleged to be~~
2 ~~exclusively in the possession of the party accused of~~
3 ~~misappropriation.~~

4 *(2) The extent to which the secret information has already*
5 *been fixed in a written or electronic document, database, or*
6 *other media that can be identified with specificity.*

7 *(3) Whether the plaintiff lacks information regarding the*
8 *nature or scope of the secret due to the defendant's actions, such*
9 *as the removal of records or the lack of record keeping by*
10 *defendant.*

11 (c) If the party alleging the misappropriation does not identify
12 the trade secret with reasonable particularity, or has served a
13 document purporting to identify its trade secret as required in this
14 section, prior to commencing discovery relating to the trade
15 secret, any other party who is the target of or otherwise affected
16 by that discovery may do either or both of the following:

17 (1) Object to any discovery requested of it.

18 (2) Move for a protective order that the discovery requested of
19 it or others shall not be had until the party alleging the
20 misappropriation fully complies with this section.

21 (d) If the objection or protective order is made pursuant to
22 subdivision (c), then the other party need not respond to the
23 discovery until the court makes a determination that the party
24 alleging the misappropriation has identified a trade secret with
25 reasonable particularity.

26 ~~SEC. 5. Section 6253 of the Government Code is amended to~~
27 ~~read:~~

28 ~~6253. (a) Public records are open to inspection at all times~~
29 ~~during the office hours of the state or local agency and every~~
30 ~~person has a right to inspect any public record, except as~~
31 ~~hereafter provided. Any reasonably segregable portion of a~~
32 ~~record shall be available for inspection by any person requesting~~
33 ~~the record after deletion of the portions that are exempted by law.~~

34 ~~(b) Except with respect to public records exempt from~~
35 ~~disclosure by express provisions of law, each state or local~~
36 ~~agency, upon a request for a copy of records that reasonably~~
37 ~~describes an identifiable record or records, shall make the records~~
38 ~~promptly available to any person upon payment of fees covering~~
39 ~~direct costs of duplication, or a statutory fee if applicable. Upon~~

1 request, an exact copy shall be provided unless impracticable to
2 do so.

3 (e) ~~Each agency, upon a request for a copy of records, shall,~~
4 ~~within 10 days from receipt of the request, determine whether the~~
5 ~~request, in whole or in part, seeks copies of disclosable public~~
6 ~~records in the possession of the agency and shall promptly notify~~
7 ~~the person making the request of the determination and the~~
8 ~~reasons therefor. In unusual circumstances, the time limit~~
9 ~~prescribed in this section may be extended by written notice by~~
10 ~~the head of the agency or his or her designee to the person~~
11 ~~making the request, setting forth the reasons for the extension~~
12 ~~and the date on which a determination is expected to be~~
13 ~~dispatched. No notice shall specify a date that would result in an~~
14 ~~extension for more than 14 days. When the agency dispatches the~~
15 ~~determination, and if the agency determines that the request~~
16 ~~seeks disclosable public records, the agency shall state the~~
17 ~~estimated date and time when the records will be made available.~~
18 ~~As used in this section, “unusual circumstances” means the~~
19 ~~following, but only to the extent reasonably necessary to the~~
20 ~~proper processing of the particular request:~~

21 (1) ~~The need to search for and collect the requested records~~
22 ~~from field facilities or other establishments that are separate from~~
23 ~~the office processing the request.~~

24 (2) ~~The need to search for, collect, and appropriately examine~~
25 ~~a voluminous amount of separate and distinct records that are~~
26 ~~demanding in a single request.~~

27 (3) ~~The need for consultation, which shall be conducted with~~
28 ~~all practicable speed, with another agency having substantial~~
29 ~~interest in the determination of the request or among two or more~~
30 ~~components of the agency having substantial subject matter~~
31 ~~interest therein.~~

32 (4) ~~The need to compile data, to write programming language~~
33 ~~or a computer program, or to construct a computer report to~~
34 ~~extract data.~~

35 (d) ~~Nothing in this chapter shall be construed to permit an~~
36 ~~agency to delay or obstruct the inspection or copying of public~~
37 ~~records. The notification of denial of any request for records~~
38 ~~required by Section 6255 shall set forth the names and titles or~~
39 ~~positions of each person responsible for the denial.~~

1 ~~(e) Except as otherwise prohibited by law, a state or local~~
2 ~~agency may adopt requirements for itself that allow for faster,~~
3 ~~more efficient, or greater access to records than prescribed by the~~
4 ~~minimum standards set forth in this chapter.~~

5 ~~(f) Subpoenas duces tecum for public records in judicial or~~
6 ~~administrative proceedings in which the public agency is not a~~
7 ~~party shall be deemed to be requests for records under this~~
8 ~~chapter and shall be handled pursuant to the rules governing~~
9 ~~public disclosure under this chapter. Whenever a subpoena duces~~
10 ~~tecum compelling production of records is served on a public~~
11 ~~agency employee in a judicial or administrative proceeding in~~
12 ~~which the agency is not a party, the employee, after consultation~~
13 ~~with counsel, shall appear in response thereto, respectfully~~
14 ~~decline to produce the records on the grounds that it is prohibited~~
15 ~~by this section, and state that the production of the records~~
16 ~~involved will be handled in accordance with and treated as a~~
17 ~~Public Records Act request.~~

18 ~~SEC. 6.~~

19 ~~SEC. 5.~~ Section 6254 of the Government Code is amended to
20 read:

21 6254. Except as provided in Sections 6254.7 and 6254.13,
22 nothing in this chapter shall be construed to require disclosure of
23 records that are any of the following:

24 (a) Preliminary drafts, notes, or interagency or intra-agency
25 memoranda that are not retained by the public agency in the
26 ordinary course of business, if the public interest in withholding
27 those records clearly outweighs the public interest in disclosure.

28 (b) Records pertaining to pending litigation to which the
29 public agency is a party, or to claims made pursuant to Division
30 3.6 (commencing with Section 810), until the pending litigation
31 or claim has been finally adjudicated or otherwise settled.

32 (c) Personnel, medical, or similar files, the disclosure of which
33 would constitute an unwarranted invasion of personal privacy.

34 (d) Contained in or related to any of the following:

35 (1) Applications filed with any state agency responsible for the
36 regulation or supervision of the issuance of securities or of
37 financial institutions, including, but not limited to, banks, savings
38 and loan associations, industrial loan companies, credit unions,
39 and insurance companies.

1 (2) Examination, operating, or condition reports prepared by,
2 on behalf of, or for the use of, any state agency referred to in
3 paragraph (1).

4 (3) Preliminary drafts, notes, or interagency or intra-agency
5 communications prepared by, on behalf of, or for the use of, any
6 state agency referred to in paragraph (1).

7 (4) Information received in confidence by any state agency
8 referred to in paragraph (1).

9 (e) Geological and geophysical data, plant production data,
10 and similar information relating to utility systems development,
11 or market or crop reports, that are obtained in confidence from
12 any person.

13 (f) Records of complaints to, or investigations conducted by,
14 or records of intelligence information or security procedures of,
15 the office of the Attorney General and the Department of Justice,
16 and any state or local police agency, or any investigatory or
17 security files compiled by any other state or local police agency,
18 or any investigatory or security files compiled by any other state
19 or local agency for correctional, law enforcement, or licensing
20 ~~purpose~~ *purposes*. However, state and local law enforcement
21 agencies shall disclose the names and addresses of persons
22 involved in, or witnesses other than confidential informants to,
23 the incident, the description of any property involved, the date,
24 time, and location of the incident, all diagrams, statements of the
25 parties involved in the incident, the statements of all witnesses,
26 other than confidential informants, to the victims of an incident,
27 or an authorized representative thereof, an insurance carrier
28 against which a claim has been or might be made, and any person
29 suffering bodily injury or property damage or loss, as the result
30 of the incident caused by arson, burglary, fire, explosion, larceny,
31 robbery, carjacking, vandalism, vehicle theft, or a crime as
32 defined by subdivision (b) of Section 13951, unless the
33 disclosure would endanger the safety of a witness or other person
34 involved in the investigation, or unless disclosure would
35 endanger the successful completion of the investigation or a
36 related investigation. However, nothing in this division shall
37 require the disclosure of that portion of those investigative files
38 that reflects the analysis or conclusions of the investigating
39 officer.

1 Customer lists provided to a state or local police agency by an
2 alarm or security company at the request of the agency shall be
3 construed to be records subject to this subdivision.

4 Notwithstanding any other provision of this subdivision, state
5 and local law enforcement agencies shall make public the
6 following information, except to the extent that disclosure of a
7 particular item of information would endanger the safety of a
8 person involved in an investigation or would endanger the
9 successful completion of the investigation or a related
10 investigation:

11 (1) The full name and occupation of every individual arrested
12 by the agency, the individual's physical description including
13 date of birth, color of eyes and hair, sex, height and weight, the
14 time and date of arrest, the time and date of booking, the location
15 of the arrest, the factual circumstances surrounding the arrest, the
16 amount of bail set, the time and manner of release or the location
17 where the individual is currently being held, and all charges the
18 individual is being held upon, including any outstanding warrants
19 from other jurisdictions and parole or probation holds.

20 (2) Subject to the restrictions imposed by Section 841.5 of the
21 Penal Code, the time, substance, and location of all complaints or
22 requests for assistance received by the agency and the time and
23 nature of the response thereto, including, to the extent the
24 information regarding crimes alleged or committed or any other
25 incident investigated is recorded, the time, date, and location of
26 occurrence, the time and date of the report, the name and age of
27 the victim, the factual circumstances surrounding the crime or
28 incident, and a general description of any injuries, property, or
29 weapons involved. The name of a victim of any crime defined by
30 Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286,
31 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code
32 may be withheld at the victim's request, or at the request of the
33 victim's parent or guardian if the victim is a minor. When a
34 person is the victim of more than one crime, information
35 disclosing that the person is a victim of a crime defined by
36 Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 286, 288,
37 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may
38 be deleted at the request of the victim, or the victim's parent or
39 guardian if the victim is a minor, in making the report of the
40 crime, or of any crime or incident accompanying the crime,

1 available to the public in compliance with the requirements of
2 this paragraph.

3 (3) Subject to the restrictions of Section 841.5 of the Penal
4 Code and this subdivision, the current address of every individual
5 arrested by the agency and the current address of the victim of a
6 crime, where the requester declares under penalty of perjury that
7 the request is made for a scholarly, journalistic, political, or
8 governmental purpose, or that the request is made for
9 investigation purposes by a licensed private investigator as
10 described in Chapter 11.3 (commencing with Section 7512) of
11 Division 3 of the Business and Professions Code. However, the
12 address of the victim of any crime defined by Section 220, 261,
13 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289,
14 422.6, 422.7, 422.75, or 646.9 of the Penal Code shall remain
15 confidential. Address information obtained pursuant to this
16 paragraph may not be used directly or indirectly, or furnished to
17 another, to sell a product or service to any individual or group of
18 individuals, and the requester shall execute a declaration to that
19 effect under penalty of perjury. Nothing in this paragraph shall be
20 construed to prohibit or limit a scholarly, journalistic, political, or
21 government use of address information obtained pursuant to this
22 paragraph.

23 (g) Test questions, scoring keys, and other examination data
24 used to administer a licensing examination, examination for
25 employment, or academic examination, except as provided for in
26 Chapter 3 (commencing with Section 99150) of Part 65 of the
27 Education Code.

28 (h) The contents of real estate appraisals or engineering or
29 feasibility estimates and evaluations made for or by the state or
30 local agency relative to the acquisition of property, or to
31 prospective public supply and construction contracts, until all of
32 the property has been acquired or all of the contract agreement
33 obtained. However, the law of eminent domain shall not be
34 affected by this provision.

35 (i) Information required from any taxpayer in connection with
36 the collection of local taxes that is received in confidence and the
37 disclosure of the information to other persons would result in
38 unfair competitive disadvantage to the person supplying the
39 information.

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege. The exemption shall include records that contain trade secret information and confidential commercial or financial information obtained from a submitter that is privileged or confidential. For purposes of this section, the following definitions shall apply:

(1) “Trade secret” has the meaning set forth in subdivision (d) of Section 3426.1 of the Civil Code.

(2) “Confidential commercial or financial information” means business and financial records provided to the government by a submitter that contain material the disclosure of which could reasonably be expected to cause substantial competitive harm.

(3) “Submitter” means any person or entity who provides trade secret or confidential commercial or financial information to the government. The term “submitter” includes, but is not limited to, individuals, corporations, limited liability companies, and partnerships.

(l) Correspondence of and to the Governor or employees of the Governor’s office or in the custody of or maintained by the Governor’s Legal Affairs Secretary. However, public records shall not be transferred to the custody of the Governor’s Legal Affairs Secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel, except those records in the public database maintained by the Legislative Counsel that are described in Section 10248.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the

1 California Pollution Control Financing Authority determines that
2 disclosure of the financial data would be competitively injurious
3 to the applicant and the data is required in order to obtain
4 guarantees from the United States Small Business
5 Administration. The California Pollution Control Financing
6 Authority shall adopt rules for review of individual requests for
7 confidentiality under this section and for making available to the
8 public those portions of an application that are subject to
9 disclosure under this chapter.

10 (p) Records of state agencies related to activities governed by
11 Chapter 10.3 (commencing with Section 3512), Chapter 10.5
12 (commencing with Section 3525), and Chapter 12 (commencing
13 with Section 3560) of Division 4 of Title 1, that reveal a state
14 agency's deliberative processes, impressions, evaluations,
15 opinions, recommendations, meeting minutes, research, work
16 product, theories, or strategy, or that provide instruction, advice,
17 or training to employees who do not have full collective
18 bargaining and representation rights under these chapters.
19 Nothing in this subdivision shall be construed to limit the
20 disclosure duties of a state agency with respect to any other
21 records relating to the activities governed by the employee
22 relations acts referred to in this subdivision.

23 (q) Records of state agencies related to activities governed by
24 Article 2.6 (commencing with Section 14081), Article 2.8
25 (commencing with Section 14087.5), and Article 2.91
26 (commencing with Section 14089) of Chapter 7 of Part 3 of
27 Division 9 of the Welfare and Institutions Code, that reveal the
28 special negotiator's deliberative processes, discussions,
29 communications, or any other portion of the negotiations with
30 providers of health care services, impressions, opinions,
31 recommendations, meeting minutes, research, work product,
32 theories, or strategy, or that provide instruction, advice, or
33 training to employees.

34 Except for the portion of a contract containing the rates of
35 payment, contracts for inpatient services entered into pursuant to
36 these articles, on or after April 1, 1984, shall be open to
37 inspection one year after they are fully executed. If a contract for
38 inpatient services that is entered into prior to April 1, 1984, is
39 amended on or after April 1, 1984, the amendment, except for
40 any portion containing the rates of payment, shall be open to

1 inspection one year after it is fully executed. If the California
2 Medical Assistance Commission enters into contracts with health
3 care providers for other than inpatient hospital services, those
4 contracts shall be open to inspection one year after they are fully
5 executed.

6 Three years after a contract or amendment is open to inspection
7 under this subdivision, the portion of the contract or amendment
8 containing the rates of payment shall be open to inspection.

9 Notwithstanding any other provision of law, the entire contract
10 or amendment shall be open to inspection by the Joint Legislative
11 Audit Committee and the Legislative Analyst's Office. The
12 committee and that office shall maintain the confidentiality of the
13 contracts and amendments until the time a contract or
14 amendment is fully open to inspection by the public.

15 (r) Records of Native American graves, cemeteries, and sacred
16 places and records of Native American places, features, and
17 objects described in Sections 5097.9 and 5097.993 of the Public
18 Resources Code maintained by, or in the possession of, the
19 Native American Heritage Commission, another state agency, or
20 a local agency.

21 (s) A final accreditation report of the Joint Commission on
22 Accreditation of Hospitals that has been transmitted to the State
23 Department of Health Services pursuant to subdivision (b) of
24 Section 1282 of the Health and Safety Code.

25 (t) Records of a local hospital district, formed pursuant to
26 Division 23 (commencing with Section 32000) of the Health and
27 Safety Code, or the records of a municipal hospital, formed
28 pursuant to Article 7 (commencing with Section 37600) or
29 Article 8 (commencing with Section 37650) of Chapter 5 of
30 Division 3 of Title 4 of this code, that relate to any contract with
31 an insurer for inpatient or outpatient services for alternative rates
32 pursuant to Section 10133 of the Insurance Code. However, the
33 record shall be open to inspection within one year after the
34 contract is fully executed.

35 (u) (1) Information contained in applications for licenses to
36 carry firearms issued pursuant to Section 12050 of the Penal
37 Code by the sheriff of a county or the chief or other head of a
38 municipal police department that indicates when or where the
39 applicant is vulnerable to attack or that concerns the applicant's

1 medical or psychological history or that of members of his or her
2 family.

3 (2) The home address and telephone number of peace officers,
4 judges, court commissioners, and magistrates that are set forth in
5 applications for licenses to carry firearms issued pursuant to
6 Section 12050 of the Penal Code by the sheriff of a county or the
7 chief or other head of a municipal police department.

8 (3) The home address and telephone number of peace officers,
9 judges, court commissioners, and magistrates that are set forth in
10 licenses to carry firearms issued pursuant to Section 12050 of the
11 Penal Code by the sheriff of a county or the chief or other head
12 of a municipal police department.

13 (v) (1) Records of the Major Risk Medical Insurance Program
14 related to activities governed by Part 6.3 (commencing with
15 Section 12695) and Part 6.5 (commencing with Section 12700)
16 of Division 2 of the Insurance Code, and that reveal the
17 deliberative processes, discussions, communications, or any other
18 portion of the negotiations with health plans, or the impressions,
19 opinions, recommendations, meeting minutes, research, work
20 product, theories, or strategy of the board or its staff, or records
21 that provide instructions, advice, or training to employees.

22 (2) (A) Except for the portion of a contract that contains the
23 rates of payment, contracts for health coverage entered into
24 pursuant to Part 6.3 (commencing with Section 12695) or Part
25 6.5 (commencing with Section 12700) of Division 2 of the
26 Insurance Code, on or after July 1, 1991, shall be open to
27 inspection one year after they have been fully executed.

28 (B) In the event that a contract for health coverage that is
29 entered into prior to July 1, 1991, is amended on or after July 1,
30 1991, the amendment, except for any portion containing the rates
31 of payment, shall be open to inspection one year after the
32 amendment has been fully executed.

33 (3) Three years after a contract or amendment is open to
34 inspection pursuant to this subdivision, the portion of the contract
35 or amendment containing the rates of payment shall be open to
36 inspection.

37 (4) Notwithstanding any other provision of law, the entire
38 contract or amendments to a contract shall be open to inspection
39 by the Joint Legislative Audit Committee. The committee shall
40 maintain the confidentiality of the contracts and amendments

thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (3).

(w) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Chapter 8 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 8 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract are open to inspection pursuant to paragraph (2).

(x) Financial data contained in applications for registration, or registration renewal, as a service contractor filed with the Director of Consumer Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth, or financial data regarding the funded accounts held in escrow for service contracts held in force in this state by a service contractor.

(y) (1) Records of the Managed Risk Medical Insurance Board related to activities governed by Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its

1 staff, or records that provide instructions, advice, or training to
2 employees.

3 (2) (A) Except for the portion of a contract that contains the
4 rates of payment, contracts entered into pursuant to Part 6.2
5 (commencing with Section 12693) or Part 6.4 (commencing with
6 Section 12699.50) of Division 2 of the Insurance Code, on or
7 after January 1, 1998, shall be open to inspection one year after
8 they have been fully executed.

9 (B) In the event that a contract entered into pursuant to Part
10 6.2 (commencing with Section 12693) or Part 6.4 (commencing
11 with Section 12699.50) of Division 2 of the Insurance Code is
12 amended, the amendment shall be open to inspection one year
13 after the amendment has been fully executed.

14 (3) Three years after a contract or amendment is open to
15 inspection pursuant to this subdivision, the portion of the contract
16 or amendment containing the rates of payment shall be open to
17 inspection.

18 (4) Notwithstanding any other provision of law, the entire
19 contract or amendments to a contract shall be open to inspection
20 by the Joint Legislative Audit Committee. The committee shall
21 maintain the confidentiality of the contracts and amendments
22 thereto until the contract or amendments to a contract are open to
23 inspection pursuant to paragraph (2) or (3).

24 (5) The exemption from disclosure provided pursuant to this
25 subdivision for the contracts, deliberative processes, discussions,
26 communications, negotiations with health plans, impressions,
27 opinions, recommendations, meeting minutes, research, work
28 product, theories, or strategy of the board or its staff shall also
29 apply to the contracts, deliberative processes, discussions,
30 communications, negotiations with health plans, impressions,
31 opinions, recommendations, meeting minutes, research, work
32 product, theories, or strategy of applicants pursuant to Part 6.4
33 (commencing with Section 12699.50) of Division 2 of the
34 Insurance Code.

35 (z) Records obtained pursuant to paragraph (2) of subdivision
36 (f) of Section 2891.1 of the Public Utilities Code.

37 (aa) A document prepared by or for a state or local agency that
38 assesses its vulnerability to terrorist attack or other criminal acts
39 intended to disrupt the public agency's operations and that is for
40 distribution or consideration in a closed session.

(bb) Critical infrastructure information, as defined in Section 131(3) of Title 6 of the United States Code, that is voluntarily submitted to the California Office of Homeland Security for use by that office, including the identity of the person who or entity that voluntarily submitted the information. As used in this subdivision, “voluntarily submitted” means submitted in the absence of the office exercising any legal authority to compel access to or submission of critical infrastructure information. This subdivision shall not affect the status of information in the possession of any other state or local governmental agency.

(cc) All information provided to the Secretary of State by a person for the purpose of registration in the Advance Health Care Directive Registry, except that those records shall be released at the request of a health care provider, a public guardian, or the registrant’s legal representative.

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act (Section 158 of subchapter II of Chapter 7 of Title 29 of the United States Code).

~~SEC. 7.~~

SEC. 6. Section 6256 is added to the Government Code, to read:

6256. (a) The head of each department and agency subject to this chapter shall, to the extent permitted by law, establish procedures to notify the submitters of any records containing trade secret or confidential commercial or financial information as defined in subdivision (k) of Section 6254, when those records are requested pursuant to this chapter, if after reviewing the request and the responsive records, the department or agency determines that it may be required to disclose the records. The agency shall use good-faith efforts to advise the submitters regarding the procedures established pursuant to this subdivision. If notification of a voluminous number of submitters is required, the notification may be accomplished by posting or publishing the notice in a place reasonably calculated to accomplish notification.

(b) (1) For information described in subdivision (k) of Section 6254, submitted prior to January 1, 2007, the head of each department or agency shall, to the extent permitted by law, provide the submitter with notice pursuant to subdivision (a) whenever either of the following apply:

(A) The records are less than 10 years old, and the information has been designated by the submitter as confidential commercial information.

(B) The department or agency has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(2) For trade secret or confidential commercial or financial information submitted on or after January 1, 2007, the head of each department or agency shall, to the extent permitted by law, establish procedures to permit the submitters of trade secret or confidential commercial and financial information to designate, at the time the information is submitted to the government agency or a reasonable time thereafter, any information the disclosure of which the submitter claims could reasonably be expected to cause substantial competitive harm. The agency procedures may provide for the expiration, after a specified period of time or changes in circumstances, of designations of competitive harm made by submitters. Additionally, those procedures may permit the agency to designate specific classes of information that will be treated by the agency as if the information had been so designated by the submitter. The head of each department or agency shall, to the extent permitted by law, provide the submitter with notice pursuant to subdivision (a) whenever the department or agency determines that it may be required to disclose records for any of the following reasons:

(A) The information is designated pursuant to this paragraph.

(B) The information falls within the exemption specified in subdivision (k) of Section 6254.

(C) The department or agency has reason to believe the disclosure of the information could reasonably be expected to cause substantial competitive harm.

(c) When notification is made pursuant to subdivision (a), each agency's procedures shall, to the extent permitted by law, afford the submitter a reasonable period of time in which the submitter or its designee may object to the disclosure of any specified

1 portion of the information and to state all grounds upon which
2 the disclosure is opposed.

3 (d) Each agency shall give careful consideration to all
4 specified grounds for nondisclosure prior to making an
5 administrative determination of the issue. In all instances when
6 the agency determines to disclose the requested records, its
7 procedures shall provide that the agency give the submitter a
8 written statement briefly explaining why the submitter's
9 objections are not sustained. The statement shall, to the extent
10 permitted by law, be provided to submitter at least 15 calendar
11 days prior to the specified disclosure date to allow the submitter
12 to seek legal remedies to prevent the disclosure.

13 (e) The notice requirements of this section do not apply if any
14 of the following apply:

15 (1) The agency determines that the information should not be
16 disclosed.

17 (2) The information has been published or has been officially
18 made available to the public.

19 (3) Disclosure of the information is required by law, other than
20 pursuant to this chapter.

21 (4) The disclosure is required by an agency rule that complies
22 with all of the following:

23 (A) The rule was adopted pursuant to notice and public
24 comment.

25 (B) The rule specifies narrow classes of records submitted to
26 the agency that are to be released pursuant to this chapter.

27 (C) The rule provides, in exceptional circumstances, for notice
28 when the submitter provides written justification, at the time the
29 information is submitted or a reasonable time thereafter, that
30 disclosure of the information could reasonably be expected to
31 cause substantial competitive harm.

32 (5) The information requested is not designated by the
33 submitter as exempt from disclosure when the submitter had an
34 opportunity to do so at the time of submission of the information
35 or a reasonable time thereafter, unless the agency has substantial
36 reason to believe that disclosure of the information would result
37 in competitive harm.

38 (6) The designation made by the submitter appears obviously
39 frivolous; except that, in that case, the agency must provide the
40 submitter with written notice of any final administrative

1 disclosure determination within 15 calendar days prior to the
2 specified disclosure date.

3 (f) If an agency notifies a submitter that it may be required to
4 disclose information pursuant to subdivision (a), the agency shall
5 also notify the requester that notice and an opportunity to
6 comment are being provided the submitter. If an agency notifies
7 a submitter of a final decision pursuant to subdivision (d), the
8 agency shall also notify the requester.

9 (g) If the agency has deleted segregable portions of the record
10 that are deemed exempt as provided in subdivision (a) of Section
11 6253, the records withheld and the information deleted shall be
12 indicated on the released portion of the record, unless including
13 that indication would harm an interest protected by the
14 exemption stated in subdivision (k) of Section 6254 pursuant to
15 which the deletion is made. If technically feasible, the volume of
16 the information deleted shall be indicated at the place in the
17 record where the deletion is made.

18 (h) If the agency denies disclosure of information requested,
19 the agency shall provide the requester with an index identifying
20 the record that has had portions deleted or that has been withheld
21 entirely, without disclosing any details of that record that are
22 trade secret or confidential commercial or financial information,
23 or that could reasonably be expected to cause substantial
24 competitive harm.

25 (i) *In any suit brought by the requester seeking to compel*
26 *disclosure of records withheld by the agency due to the*
27 *designation pursuant to paragraph (2) of subdivision (b) that*
28 *those records contain trade secret or confidential commercial or*
29 *financial information, shall be brought only against the submitter*
30 *of the records and not against the agency responding to the*
31 *request or subpoena. The action shall be in the form of injunctive*
32 *relief against the submitter, if the designations of exempt*
33 *material were improperly made, either requiring that the*
34 *submitter provide those records directly to the requester or*
35 *otherwise require that the designations made by the submitter be*
36 *changed to allow the agency to produce the records requested.*
37 *financial information, the following shall apply:*

38 (1) *The party bringing suit shall join the submitter to the*
39 *extent that the submitting party is known to the requesting party.*
40 *The submitter shall accept the jurisdiction of the court or agency*

1 *that has jurisdiction over the Public Records Act request or shall*
2 *waive its right to maintain the confidentiality of the materials.*

3 *(2) To the extent that the submitting party is not joined*
4 *pursuant to paragraph (1), the government agency shall file a*
5 *third party complaint to join the submitter. The submitter shall*
6 *accept to the jurisdiction of the court or agency that has*
7 *jurisdiction over the Public Records Act request or shall waive*
8 *its right to maintain the confidentiality of the materials.*

9 *(3) The submitter shall have all the rights provided to a real*
10 *party in interest in connection with the action to compel*
11 *production of materials, including the right to participate in any*
12 *hearings, briefing, or discovery in the action.*

13 *(j) (1) To the extent that the agency receives a subpoena duces*
14 *tecum that requests records that have been designated by a*
15 *submitter containing a trade secret or confidential commercial*
16 *or financial information, the agency shall do all of the following:*

17 *(A) Provide notice and a copy of the subpoena to the submitter*
18 *and provide a reasonable opportunity to object to the request.*

19 *(B) Provide notice to the party issuing the subpoena that the*
20 *subpoena requests material that has been designated under this*
21 *section and identify the submitter to the party issuing the*
22 *subpoena.*

23 *(C) Object and withhold documents designated pursuant to*
24 *this section until the submitter authorizes the release of the*
25 *materials or the court orders enforcement of the subpoena duces*
26 *tecum.*

27 *(D) A submitter shall have the right to intervene in the*
28 *original action solely as needed to contest the disclosure of*
29 *designated documents pursuant to the subpoena.*

30 *(2) Nothing in this subdivision shall delay or prevent the*
31 *disclosure by the agency of materials responsive to the subpoena*
32 *that do not contain material designated pursuant to this section.*